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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,266	06/23/2003	Masao Moriguchi	SLA0770	1706

55286

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 02/02/2009

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/602,266	Applicant(s) MORIGUCHI ET AL.	
	Examiner MARIANNE L. PADGETT	Art Unit 1792	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 06 November 2008 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

/Marianne L. Padgett/
Primary Examiner, Art Unit 1792

Continuation of 10. Other (including any explanation in support of the above items):

The Summary of the Invention (# 4) as presented on pages 4-5 of appellants' brief fails to properly map out the limitations of the independent claims with respect to the original specification, as not all limitations therein are supported by page & line number. Particularly note in independent claim 1, no support for requirement of the projection of "a second aperture pattern oriented in the second direction orthogonal to the first direction, without rotating the silicon film, and without rotating the aperture patterns" was cited in the summary, as the citations supporting independent claim 1 (p. 21, line 17-p. 22, line 8; figure 14; & p. 6, line 10-p. 7, line 9) have no negative teachings concerning not rotating either the silicon film or the aperture patterns. In fact, p.6, line 16 explicitly provides for the option of rotating substrate, while page 7, lines 1-4 merely provide a statement that is true of any pre-made mask with multiple apertures, thus does not provide a citation of support for this negative limitation. It is also noted that the citation to support for directional solidification (p. 11, lines 8-15 & p. 22, lines 3-4) do not fix this deficiency. Note as appellants have also not cited support (not formally necessary) for their alleged improvements & alleged serious problems they are solving, as discussed in the introductory paragraph of the summary, this introduction also does not show support for the negative limitations. Proof reading to verify that all limitations of the independent claims have proper cited support is recommended.

With respect to grounds rejections (#5), appellants have not properly recited all the grounds. Specifically, with respect to their ground #2 "Whether claims 65-66 are enabled in the specification in accordance with 35 USC 112, first paragraph", there is both the enablement rejection as recited by appellants starting on page 6 of the action mailed 9/17/2008, but also on page 7, there is a written description 112, first rejection made. Appellants' ground #4 "whether claims 1, 3-21, 23, and 25-24 comply with enablement requirement under 35 USC 112, first paragraph", is incorrect as a rejection which starts on page 12 of the final rejection is a written description, 112 first rejection.

Note minor errors in Claims Appendix (#7), claims 25, 28, 32 & 35 still include underlining in their third lines (under the ";").

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marianne L. Padgett whose telephone number is (571) 272-1425. The examiner can normally be reached on M-F from about 9:00 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks, can be reached at (571) 272-1423. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Marianne L. Padgett/
Primary Examiner, Art Unit 1792

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